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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,182	05/14/2001	David A. Fell	659-700	8195

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/855,182	Applicant(s) FELL ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005 and 9-14-05 telephone call.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,18-22,24-39,49-52 and 55-60 is/are pending in the application.
- 4a) Of the above claim(s) 5,13,15,18,21,22,24-31,39,51,59 and 60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-12,14,16,19,20,32-38,49,50,52 and 55-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6-13-05 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 5, 13, 15, 18, 21-22, 24-31, 39 and 51 are still withdrawn and new claims 59-60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 9 or 20.

2. With regard to Applicant's 6-13-05 remarks, claim 14 has been reinstated. Claims 59-60 are withdrawn in light of the claim language interpretation of the terminology "secured", i.e. like "connected" or "bonded", see discussion *infra*, and the paragraph at page 18, line 20, third sentence thereof, i.e. these claims do not read on the elected invention and species. Claim 15 still is withdrawn because while the Figures 18 and 19 and text describe such a cover as part of the article, it is claimed as part of the chassis along with the topsheet. The description of Figures 18 and 19 explicitly describe the topsheet as part of the chassis but describe the cover as part of the article, not chassis. Note claim 52 which is being considered on its merits *infra*.

Specification

Drawings

3. The drawings were received on 6-13-05. These drawings are approved by the Examiner.

Claim Language Interpretation

4. Directional terms are defined as set forth on page 7, lines 3-14. The "body side", "inner" or "upper" surface, and now the "second" surface, will be considered the surface of the element from side edge to side edge most immediately adjacent the body in Figure 19 at the side edge and the "outer", "lower" or "garment side", and now the "first" surface, will be considered the entire surface from side edge to side edge opposite such "body side" surface. The terms "outer cover", "back sheet" and "barrier" are considered to be usable interchangeably, see page 8, lines 1-3 and page 9, lines 1-3. "Extensible" is defined as set forth on page 22, lines 1-3. The terms "location", "fixedly", "fixedly detachable" and "fixedly detachably connected" are defined as set forth on pages 14, 15 and 19. As already discussed, the terminology "connected" and "bonding" is interpreted as including indirect or direct connections. It is also noted that the "wherein" clause of claim 1 does not require detachment due to expansion only occurring when there is expansion of the absorbent material. Also such clause does not require detachment due to detachment of the connection. Claims 16 and 37, as set forth infra, do not require that there be no crotch portion other than the absorbent element which spaces the panels.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 3-4, 6-12, 14, 16, 19-20, 32-38, 49-50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Houghton et al '711.

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Claims 1, 14, 19-20: see Claim Language Interpretation section supra, Figures, the paragraph bridging cols. 2-3, col. 3, lines 37-43 and 60-64, col. 4, lines 13-22, 40-42 and 46-62, the sentence bridging cols. 4-5, col. 5, lines 30-51, col. 6, lines 17-29 and 33-35, col. 7, lines 42-64, col. 10, lines 22-34, col. 16, lines 58-62, col. 17, lines 18-26, col. 17, line 34-col. 18, line 40, i.e. the chassis is the panty or undergarment referred to in col. 4, lines 56-59 or sheet 22, the absorbent element is either 20 where the connection at the first location to the "garment side" surface of the chassis, i.e. the panty or undergarment, is indirect or is 26 and 24 where the connection at the first location to the "garment side" surface of the chassis, i.e. sheet 24, is direct, the first location is adjacent 32 when the first location connection is indirect or is adjacent 76 when the first location connection is direct, the absorbent material is at least a portion of 26, the cover sheet is at least the layer 24, the second location is adjacent 72, 74 and the first and second portions are the "outer" surfaces of the pleats or shelves 58, 60 of the cover sheet 24 which are connected, see again discussion of the terminology "connected" or "bonding" supra and the claim language which does not require direct connection or bonding of the "outer" or "garment side" surfaces of such portions . With regard to the preamble and "wherein" clause of claim 1, see portions already cited.

Claim 3: see portions of Houghton cited supra, i.e. the primary bond is 32 or 76, see Claim Language Interpretation section supra, and the secondary bond is 72, 74. The secondary bond detaches during use but the primary bond does not, i.e. the primary bond is stronger than the secondary bond during use.

Claim 4: element 22 when the first location connection is indirect or col. 9, lines 1-4 and 21-33 when the first location connection is direct, i.e. the upper tissue layer of the combination

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particle/tissue absorbent core or the upper sheet or web of a laminate of multiple sheets or webs forms the claimed topsheet.

Claims 6-7 and 9: see Figures, adjacent elements 32 (indirect connection) or 76 (direct connection) and adjacent elements 72, 74 and the portions of cols. 7, 10, 16 and 17-18 cited *supra*. It is noted that such regions defined by 76, 72 and 74 have a length and width.

Claim 8: when the chassis is considered 22, i.e. the direct connection, then the first location is adjacent 76 on both sides and the second location is 72, 74, see portions cited *supra* and Figures. Claims 10-11: see Claim Language Interpretation section *supra*, Figures, portions of 471 1 cited with respect to claims 6-7 and 9 *supra*, and element 56, i.e. the absorbent element ends are connected to the chassis at the first location at least indirectly by the connection between the chassis and the cover sheet which connection includes the longitudinally outermost portion of 56 which is spaced from the second location adjacent 72, 74 shown at Figure 1 along line 2-2.

Claim 12: See elements 26, 58, 60, 62 and 64.

Claim 16: see Claim Language Interpretation section *supra*, i.e. the undergarment (indirect connection) or diaper/incontinent briefs (direct connection), see col. 4, lines 59-62, panty has spaced apart panels and the absorbent element 20 (indirect connection) or 24, 26 (direct connection) is connected to each, at least indirectly, via the crotch portion with the primary bond 32 or 76. It is noted that the claim language does not require direct bonding or no crotch portion except for the absorbent element. See also the response to arguments section *infra*.

Claim 49: element 32 forms a fixedly detachable indirect connection when the chassis is the undergarment, see Claim Language Interpretation section supra.

Claim 50: see at least element 34 at col. 127, lines 7-10. It is noted that the claim does not require any specific dimension of the outer cover relative the cover, i.e. not required to entirely cover such.

Claims 32-38, 52 and 54: see discussion of claims supra. Additionally the primary bond region is the extent of element 32 (indirect connection) or 76 (direct connection), and the secondary bond region is the extent of 72,74.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houghton '711 in view of Van Gompel '688.

New claims 55-58 require the chassis comprising panels having waist portions secured to define leg openings (claims 55 and 57) and the panels secured by releasable fasteners (Claim 56 and 58). Houghton clearly teaches the chassis may be an undergarment(indirect connection) or the article may be an incontinent brief or diaper(direct connection). While such undergarment or article, as well as the article when the article is an incontinent pad, all explicitly or necessarily include front and rear panels, whether such panels include the claimed secured waist portions

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and fasteners or not is not explicitly clear. However, Van Gompel et al '688 teaches an absorbent article which can also be a diaper, incontinence garment, or feminine care article, which also has a chassis to which an expandable absorbent article is attached at the garment side or body side thereof. The chassis not only has panels but those panels have waist portions secured together with releasable fasteners to define leg openings. See Figure 2 thereof, for example. Therefore, to make the panels/chassis of Houghton the panels/chassis of Van Gompel instead, i.e. the claimed panels, if not already, would be obvious to one of ordinary skill in the art, see *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

Response to Arguments

9. Applicant's remarks with regard to the informalities on pages 13 have been considered but are either deemed moot in that the issue argued has not been repeated or are deemed not persuasive for the reasons set forth supra. Applicants remarks on pages 14-16 with respect to the prior art have been considered but are deemed not persuasive because such are narrower than the claim language and/or teachings of the prior art. For example, contrary to Applicant's remarks on page 14 with respect to claim 1, the terminology "chassis" does not require the specifics as argued. Comparing page 7, lines 15-30 to other portions of the specification which define terminology, e.g. page 7, lines 3-14, page 22, lines 1-3, it is clear while the chassis can include such structure, the term "chassis" is not limited thereto. Therefore, the term "chassis" will be given its usual, i.e. dictionary, definition, e.g. a frame to which other elements are attached.

Likewise Applicants arguments are narrower than the terms “connected”. It is noted that Applicant’s arguments indicate Applicant is defining “connection” as being limited to a direct connection. However, the term has not been defined so narrowly nor do the claims explicitly require such a “direct connection”, see discussion of such terminology supra. Applicants remarks with regard to claims 16 and 37 in the last paragraph on page 15 are also narrower than the claim language which claims recite the chassis including panels to which the abs element is connected. Regardless of whether Houghton’s disclosure of briefs, diapers, etc. recites such panels, Note rejection of claims 55-58 supra, the sheet 22 of the incontinent pad, i.e. the chassis when the connection is direct as discussed supra, which is explicitly described also has such front and rear panels. Comparing claims 16 and 37 to new claims 55-58 it is noted that the panels of 16 and 37 don’t require waist portions or fasteners, etc. Furthermore, Applicants arguments with regard to col. 4, lines 57-62, i.e. the absorbent article not being attached to the chassis formed thereby are unclear because the article would be the brief or diaper not attached thereto, e.g. the layer 22 would be the upper surface of such article. With regard to Applicants remarks with respect to the new claims, see discussion supra. Finally Applicant’s remarks in footnote 1 on page 14 have been noted. It is noted that such do not appear to be consistent with the prosecution record, e.g. in the first Office action, 7/03, following the 4-2003 IDS claim 1 wasn’t even considered on its merits, i.e. only now cancelled claims 43-44 were considered on their merits, in the Office Action after that, 1/04, a first action in an RCE, was a restriction requirement. It is noted that since the 8-24-05 IDS did not include a particular form to sign the references were listed on the accompanying 892.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1,14, and 32 and the addition of claims 55-60.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 19, 2005